IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :27488 of 1998

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Dated: 24th August 2007.

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Between:

K.R. Lingapa, S/o K.Munappa, Occ.: Ex.Conductor, R/o Amangal, District Mahaboobnagar, C/o Syed Dastagir, H.No.16-6-427/1, Osmanpura, Hyderabad-24.

..... PETITIONER

AND

The Depot Manager, APSRTC, Achampet Deport and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY

RAMAMOHANA RAO

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W.P.NO.27488 OF 1998

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ORAL ORDER:

The writ petitioner while working as a Conductor with the Andhra Pradesh State Road Transport Corporation, had been subjected to domestic enquiry for his alleged unauthorized absence from duty from 3rd February 1991 to 15th April 1991. He was also charged for leaving the headquarters without sanction of the leave.

None for the writ petitioner. Heard Sri V.T.M.Prasad learned Standing Counsel for the respondent-Corporation.

It is not in dispute that the writ petitioner upon receipt of an intimation that his close relative expired, had applied for leave and secured permission to leave headquarters to attend the funeral. But however, he did not return from the said leave and report to duty from 3rd February 1991 onwards. The explanation offered for his absence was that he became sick and consequently was admitted to the District Headquarter Hospital at Nalgonda, where he received treatment and, subsequently, had been taken back to his village to enable him to recoup from out of his

illness and that he, in fact, has intimated the Depot Manager about his sickness requiring his hospitalization and the subsequent stay at his village. The Management did not dispute the correctness or genuineness of the certificate produced by the writ petitioner about his sickness or doubted his hospitalization. The thrust of the allegation seems to be that the writ petitioner had stayed away from duty without securing prior sanction of the leave. On the basis of the enquiry officer's report, who found the writ petitioner guilty of both limbs of the charges, a show cause notice was issued on 9th May 1991, proposing to impose the punishment of removal from service. When the writ petitioner subsequently reported to duty, he had been entertained to duty from 10th May 1991, but however, the order of removal has been passed, nearly one year later, on 16th April 1992. It is this order, which has been impugned by the writ petitioner by raising the industrial dispute in terms of Section 2(A)(2) of the Industrial Disputes Act. Since the writ petitioner had admitted of his absence from duty from 3rd February 1991 and since the explanation offered by him was found to be getting improved from stage by stage both the enquiry officer and the disciplinary authority has suspected the genuineness of the claim of sickness made by the writ petitioner and for these very reasons, the Tribunal

had also dismissed the industrial dispute raised by the writ petitioner. But, unfortunately, the Tribunal had glossed over the fact that Ex.M.9, order of removal dated 16th April 1992, has been passed on the ground that the writ petitioner is also guilty of unauthorized absence from 15th May 1991. Clearly, the order of removal dated 16th April, 1992 had traveled beyond the scope of the charge sheet laid against the writ petitioner. The charge laid against the petitioner is that he was unauthorisedly absent with effect from 3rd February 1991 to "till date" and the charge sheet was issued on 15th April 1991. Therefore, the writ petitioner was called upon to explain his unauthorized absence for the spell between the 3rd February 1991 to 15th April 1991 but he was not called upon to enter defense for his alleged absence from duty from 15th May 1991. Therefore, the order of removal passed by the Depot Manager on

16th April 1992 is based upon certain material, which ought not to have been taken into account and consideration. However, pursuant to an order passed by this Court on 06-10-1998, the writ petitioner had already been reinstated into duty and he had been working as a Conductor ever since. Therefore, instead of remanding the matter back for fresh

consideration and enquiry, I consider it appropriate to exercise the discretion and substitute the punishment imposed against the writ petitioner by modifying the award suitably.

I, therefore, modify the impugned order by directing the Management to reinstate the writ petitioner back to duty, but however, he be not entitled to payment of back wages. Since he was already reinstated, pursuant to the interlocutory order passed by this Court on 16-10-1998, the date of reinstatement, pursuant to the said order, shall be the date, which shall be treated as the date of his reinstatement for all other purposes.

Except continuity of service, the writ petitioner is not entitled to any other benefit for the intervening period between 16th April 1992 and the date on which he stood reinstated during the pendency of the writ petition.

With these, the writ petition stands disposed of, but however, in the circumstances, without costs.

Nooty Ramamohana Rao, J

mrk

24th August 2007.